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6  
7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-393**

12 **Mamerto Cabalar Gapultos**

**A C C U S A T I O N**

13 **941 Noah Valley Street**  
14 **Henderson, NV 89052**

15 **Registered Nurse License No. 679548**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.E.D., RN ("Complainant") brings this Accusation solely in her  
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),  
Department of Consumer Affairs.

21 2. On or about May 19, 2006, the Board issued Registered Nurse License Number  
22 679548 to Mamerto Cabalar Gapultos ("Respondent"). The Registered Nurse License has been  
23 active at all times relevant herein and expires on February 29, 2012, unless renewed.

24 **JURISDICTION AND STATUTORY PROVISIONS**

25 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent  
26 part, that the Board may discipline any licensee, including a licensee holding a temporary or an  
27 inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of  
28 the Nursing Practice Act.

1           4.     Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
2 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
3 licensee or to render a decision imposing discipline on the license. Under Section 2811  
4 subdivision (b) of the Code, the Board may renew an expired license at any time within eight  
5 years after the expiration.

6           5.     Section 2761 of the Code provides grounds for disciplinary action:

7                   “The board may take disciplinary action against a certified or licensed  
8 nurse or deny an application for a certificate or license for any of the following:

9                   (a) Unprofessional conduct, which includes, but is not limited to, the  
10 following:

11                   (1) Incompetence, or gross negligence in carrying out usual certified or  
12 licensed nursing functions.

13                   .....

14                   (4) Denial of licensure, revocation, suspension, restriction, or any other  
15 disciplinary action against a health care professional license or certificate by another  
16 state or territory of the United States, by any other government agency, or by another  
17 California health care professional licensing board. A certified copy of the decision  
18 or judgment shall be conclusive evidence of that action.”

19           6.     Title 16 section 1443 of the California Code of Regulations defines incompetence as  
20 “the lack of possession of or the failure to exercise that degree of learning, skill, care and  
21 experience ordinarily possessed and exercised by a competent registered nurse as described in  
22 Section 1443.5.”

#### 23                   COST RECOVERY

24           7.     Code section 125.3 provides, in pertinent part, that the Board may request the  
25 administrative law judge to direct a licensee found to have committed a violation or violations of  
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
27 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Disciplinary Action by the Nevada Board of Nursing)**

3 8. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(4),  
4 on the grounds of unprofessional conduct because he was disciplined by the Nevada Board of  
5 Nursing ("Nevada Board"), as follows:

6 9. On or about January 15, 2010, the Nevada Board entered into an "Agreement for  
7 Reprimand" with Respondent in the disciplinary action entitled, *In the Matter of Mamerto*  
8 *Gapultos Licensed Professional Nurse Nevada License No. RN51839*. The Nevada Board found,  
9 and respondent admitted, that on or about July 15, 2009, while working as a registered nurse and  
10 acting as a circulating nurse in the operating room at St. Rose Dominican Hospital – St. Martin  
11 Campus in Las Vegas, Nevada, Respondent charted that a "time-out" had been performed prior to  
12 a surgery's start when a time-out never occurred. Respondent admitted his false entry on the  
13 chart was unprofessional conduct and a failure to perform his nursing functions in a manner  
14 consistent with established or customary standards.

15 10. For Respondent's actions on July 15, 2009, the Nevada Board imposed, and  
16 Respondent accepted, the disciplinary action of a public reprimand. It also ordered Respondent to  
17 complete courses on Nevada nursing laws, legal ethics, assertiveness, acclimation of international  
18 nurses into United States nursing practice, and professional accountability and legal liability.

19 11. Under Section 2761 subdivision (a)(4) of the Code, the Nevada Board's disciplinary  
20 action against Respondent is ground for the California Board to take disciplinary action.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 12. By committing the acts set forth in paragraphs 8-10, above, Respondent is subject to  
24 discipline under Code section 2761 subdivision (a) on the grounds of unprofessional conduct  
25 because he wrote inaccurate information on a patient's chart, failing to exercise the learning, skill,  
26 or care of a competent registered nurse.

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PRAYER

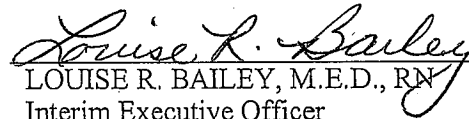
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 679548, issued to Mamerto Cabalar Gapultos;

2. Ordering Mamerto Cabalar Gapultos to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code Section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: October 29, 2010

  
LOUISE R. BAILEY, M.E.D., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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